

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

JAMES WESLEY OSBORNE,

Petitioner,

v.

No.: 3:14-cv-142-PRL-CCS

DAVID SEXTON, Warden,

Respondent.

MEMORANDUM AND ORDER

This is a petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by petitioner James Wesley Osborne ("petitioner"), in which he challenges his 1999 conviction for first degree murder. Pursuant to 28 U.S.C. § 2244(d), there is a one-year statute of limitation for state prisoners to file a habeas corpus petition in federal court; the limitation period generally runs from the date on which the judgment of conviction became final, with the provision that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." *Id.* § 2244(d)(2).

Petitioner's conviction for first degree murder was upheld on direct appeal. *State v. Osborne*, 2001 WL 667726 (Tenn. Crim. App. June 14, 2001), *perm. app. denied, id.* (Tenn. Nov. 5, 2001). He next filed a petition for post-conviction relief which was ultimately found to be time-barred. *Osborne v. State*, 2012 WL 953102 (Tenn. Crim. App. March 20, 2012), *perm. app. denied, id.*, (Tenn. June 20, 2012). Thus, it appears that petitioner's habeas corpus petition, which was filed on November 29, 2012¹, is barred by the one-year statute of limitation. *See Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005) (state post-conviction petition that was dismissed as time-barred is not considered "properly filed" in terms of § 2244(d)(2), and does not toll the statute of limitation). Accordingly, petitioner is **ORDERED to SHOW CAUSE**, within ten days of the date of this Memorandum and Order, why his petition should not be dismissed as untimely. *See Day v. McDonough*, 547 U.S. 198, 209-10 (2006) (district court may *sua sponte* dismiss habeas petition as time-barred, after giving petitioner fair notice and an opportunity to be heard).

E N T E R :


UNITED STATES DISTRICT JUDGE

¹The habeas corpus petition was filed in the U.S. District Court for the Eastern District of Tennessee, Northeastern Division, and only recently transferred to this Court.